UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

BELLAGIO, LLC d/b/a BELLAGIO LAS VEGAS

Employer

and **Case 28-RC-154081**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

International Union of Operating Engineers, Local 501, AFL-CIO (the Petitioner) seeks to represent a unit of all full-time and part-time surveillance techs employed by Bellagio, LLC d/b/a Bellagio Las Vegas (the Employer) at its Las Vegas, Nevada facility. The Employer asserts that the petition does not satisfy the mandatory obligations in Section 102.61(a)(8) of the Board's Rules and Regulations.[1] The Employer further claims that the petitioned-for unit is inappropriate because it includes confidential employees and guards. The parties do not agree on a date for an election, as the Petitioner requested June 30, or July 1, 2015, while the Employer requested July 8, 2015, based on the number of employees working on that date.

A hearing officer of the Board held a pre-election hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As described below, based on the record and relevant Board case, including the Board's decision in *Advance Pattern Co.*, 80 NLRB 29 (1948), I find that the petition is sufficient. Further, I find that the petitioned-for unit is appropriate.

The Employer's Operations

The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act. The Employer is a Nevada corporation with offices and place of business in Las Vegas, Nevada, the only operation involved herein, where it operates a casino and hotel, and provides convention and meeting spaces, restaurant services, entertainment services, retail, and other amusement services.

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[1] A petition for certification when filed by an employee or group of employees or an individual or labor organization acting in their behalf, shall contain the following: [a] statement that the employer declines to recognize the petitioner as the representative within the meaning of section 9(a) of the Act or that the labor organization is currently recognized but desires certification under the Act.

The petitioned-for unit is comprised of three surveillance tech employees at the Employer's facility. The Employer agrees to the petitioned-for unit of surveillance techs if they are not found to be guards or confidential employees.

The Petition is Sufficient

The Employer once again raised its objection to the pre-election hearing and petition for the reasons expressed in its Motion to Dismiss filed on June 16, 2015. At hearing, the Employer's argument was limited to the sufficiency of the petition itself. The Employer's Motion to Dismiss reads otherwise.[2] The Employer argues that the petition fails to state the whether the Petitioner requested recognition before filing its petition, asserting that this is a requirement pursuant to Section 102.61(a)(8) of the Board's Rules and Regulations and Section 7(a) on Form NLRB-502(RC) (RC Petition).

Section 102.61(a), which addresses petitions for certifications, does not impose any condition requiring a petitioner to demand recognition from the Employer under Section 9(a) of the National Labor Relations Act (the Act) before filing a petition for certification. Similarly, Section 102.61(a)(8), which describes the contents that must accompany a petition for certification at the time of service, does not impose this demand for recognition requirement. Although the Employer asserts that the petitioner must demand recognition under these rules, Section 102.61(a)(8) simply does not support this argument. Rather, Section 102.61(a)(8) describes that the petition for certification form provides a section for the petitioner to note one of two scenarios: (a) whether a request for recognition has been made and whether the employer declined to recognize the petitioner as a representative under Section 9(a) of the Act, or (b) whether the petitioner is currently recognized but desires certification. There is nothing on the form stating that the request for recognition is a condition for filing a valid petition. Moreover, the Employer's argument is contrary to Board law. *Advance Pattern Co.*, 80 NLRB 29, 31-38 (1948) (rejecting motion to dismiss and rejecting a strictly literal interpretation of language nearly identical[3] to Section 102.61(a)(8) as it "can produce only the atmosphere of a tensely litigated law suit in which all sides will be quick to seize upon technical defects in pleadings to gain substantive victories").[4]

For the reasons discussed above, the Employer has not established that the Petitioner has failed to comply with its obligations. For the reasons set forth in the previous Order and

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[2] "In this case, the petition does not satisfy the mandatory obligations imposed by Section 102.61(a). The petition does not include a 'statement that the employer declines to recognize the petitioner as the representative within the meaning of Section 9(a).' The Union left Section 7 of the petition completely blank and failed to ever request that the Employer recognize it as the representative of the petitioned for unit."

[3] The language in the Board's Rules at the time did not contain the additional provision "or that the labor organization is currently recognized but desires certification under the Act."

[4] "[W]e adhered faithfully to the practice of deciding on the merits any case in which it appeared that a real question concerning representation *existed*, despite the fortuity that a petition might have disclosed faulty, incomplete, inaccurate, or otherwise imperfect information. We found that the Board could only achieve a fair measure of success in performing its obligations by following that policy." Id. at 31.

the evidence produced on the record, I am once again denying the Employer's Motion to Dismiss.

The Employer's Evidence that the Petitioned-for Unit is Inappropriate

The Employer asserts that the petitioned-for unit is inappropriate because surveillance technicians are confidential employees. The Employer relies on *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170 (1981), in support of its assertion that the surveillance techs act in a confidential capacity to persons who exercise managerial functions in the field of labor relations, claiming that they are directly and inextricably involved in the Company's efforts to investigate potential employee misconduct and adjust grievances related to such matters, among other things. The Employer claims that the surveillance techs' access to information allows them to infiltrate the Employer's electronic information and physical offices without detection, which creates a conflict of interest between the technicians and the Employer notwithstanding the fact that there is no evidence that the techs have ever improperly accessed electronic information or physical areas where sensitive information is maintained.

The Employer also claims that the petitioned-for unit is inappropriate because surveillance techs are guards because they are employed to protect both the Employer's property and the safety of persons on its premises, and that neither the Surveillance Department nor the Security Department could operate without the surveillance techs. The Employer asserts that security officers patrolling catwalks have been replaced by hundreds of sophisticated security cameras which are monitored by operators. The surveillance techs' control of the camera systems, and their role in security investigations, make them an indispensable component of the security system and support their classification as guards. The Employer cites statutory language,[5] and *MGM Grand Hotel*, 274 NLRB 139 (1985), asserting that the Board found employees to be guards notwithstanding the lack of physical duties of intercepting people, confronting people, or rectifying abnormal situations because those employees were intimately involved in the security functions and life safety procedures at the employer's establishment as they operated, monitored, and maintained an automated life safety fire alarm system. The Employer also relies upon *Wright Memorial Hospital*, 255 NLRB 1319 (1980), in support of its position that no element of personal confrontation is required to establish guard status.

The Employer presented unrebutted evidence from its Director of Surveillance, Vice President of Security, and Technical Director for MGM Resorts International regarding the responsibilities of surveillance techs, surveillance operators in the Surveillance Department, security guards and security operators in the Security Department, and State gaming control regulations. The record establishes that the Surveillance Department is responsible for

[5] "[T]he Board shall not . . . decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

protecting assets of the Employer, including safety of employees and guests, and compliance with State gaming regulations. The Surveillance Department includes surveillance technicians, a lead technician, surveillance operators and lead surveillance operators, each of which reports to the shift surveillance supervisor.

Surveillance operators are stationed in the surveillance monitor room, are responsible for observing the gaming area camera system for improprieties, and recording and reporting what occurs. If an incident occurs, the operators store the video, download the video to a file, and burn it to a DVD if necessary. Although the gaming and non-gaming video systems are separated, the surveillance operators can view non-gaming cameras, but security operators cannot view surveillance cameras. There are two to four operators on each shift who maintain 24 hour coverage, each of whom has a workstation, a section of monitors to which they are assigned, and a security radio which they monitor. The surveillance supervisors are present with the surveillance operators. To be compliant with State gaming regulations, the Employer is required to maintain compliant equipment maintaining surveillance coverage for the gaming area or risk operational limitations for non-compliance. There are approximately 26 displays in the monitor room covering approximately 1,100 surveillance cameras covering the gaming areas. The operators monitor live feeds of the camera system, including fixed and moveable cameras, take radio calls, and monitor the appropriate camera systems based on issues that the operator observes or which are reported through the security radio. The operators also review recorded video if necessary.

The Employer's three surveillance technicians are responsible for designing, installing, and maintaining the integrity of the surveillance recording system and security recording system. The Employer uses a variety of recording devices, including analog and digital cameras. Pinhole and other specialized cameras are used for special operations such as investigations performed by the Security Department's investigators. The camera system changes constantly, requiring the surveillance techs to add, delete, reposition, and refocus cameras throughout the property in addition to modifying associated system alarms. System modification can be the result of remodeling and temporary events, among others. The techs adjust camera coverage with the approval of the Director of Surveillance and final approval from the State gaming authority. The techs are responsible for making sure that the surveillance system repairs are completed within the timeframe established by State gaming regulations. Surveillance techs, with the approval of the Director of Surveillance, perform work for the Security Department in support of the maintenance and operation of the security recording system.

The surveillance techs have administrative access to the entire surveillance system in order to maintain the systems and databases used for surveillance. This provides the techs with access to surveillance systems, including servers, surveillance storage, and hard drives. With system access, the techs can modify the operations of the surveillance system, add or delete users, modify surveillance coverage, add or delete security alarms, and modify electronic door lock system and electronic key fobs which give them access to substantial portion of the Employer's property. The surveillance techs do not have plenary authority to act as they wish, and should obtain necessary permission or risk discipline. Security officers rotate through the Security Department monitor room. The Director of Surveillance has

equivalent access. The surveillance techs also possess a master key which grants physical access to several locations on property which are unavailable to most persons, although the techs are still limited by policy to enter only the areas in which they need access. Tech access theoretically allows the techs to improperly format hard drives, delete video, and modify various aspects of the system, and improperly access physical locations, although the Employer was unaware of any instance where a tech used access privileges for misconduct.

The surveillance techs work from two spaces – a shop and an equipment room. Unlike the surveillance operators, surveillance techs are not generally present 24 hours a day; they work one shift, with one tech on call from the end of the day's shift until the beginning of the next day's shift.

The surveillance techs enter the surveillance monitor room daily, as they check in and out there. They check to see if any monitor room equipment needs work, including updating the surveillance operators' workstations, and ensuring that surveillance operators have appropriate access to cameras. Techs may assist operators if they encounter difficulty in retrieving video from the recording devices. Techs are not responsible for monitoring the actual behavior of people which is observed by the system.

The Employer's Security Department is separate and distinct from the Surveillance Department. It has its own staff and separate responsibilities for ensuring the safety and security of guests, employees, and the Employer's property. The Security Department observes the Employer's property through 245 security officers who are assigned to posts, and through its own video system of approximately 1,500 cameras which cover the non-gaming areas. Security officers rotate through the Security Department monitor room. The surveillance techs support the operation of the Security Department video system in the same manner that they support the Surveillance Department video system, with the exception that the security video system is not covered by State gaming regulations. The Vice President of Security also has administrator access similar to the Director of Surveillance.

Surveillance techs are distinguished from security officers in many ways. Security officers wear slacks, a blazer, while techs wear dark pants and a polo shirt. Officers carry handcuffs, while techs carry tools. Unlike surveillance techs, officers are not responsible for installing, maintaining, or adjusting cameras. Officers are obligated to engage in situations such as guests who are caught cheating, including the use of restraints. Techs are obligate to respond only to situations involving recording equipment. Techs have no training or obligation to restrain individuals. Techs have no obligation to assist an officer in restraining a guest, are not allowed by policy to restrain an individual. Officers are assigned posts where they patrol an assigned area observing for problems including misconduct, while techs work in various areas depending on the day's duties, and their required review of an area is limited to issues affecting the surveillance system such as camera domes which have come loose and are at risk of falling. Unlike security officers, who are required to react in certain situations such as cheating or misconduct, a tech is not required to react. Although some security personnel are authorized to carry weapons, surveillance techs are not. Officers respond to incidents such as fights or misconduct, while surveillance techs do not. Security officers escort persons off property, while techs do not.

Surveillance techs assist provide limited assistance for some aspects of some investigations which are called special operations. If their assistance is needed, techs develop and install recording devices based on the needs of the investigation and based on the type of area and type of conduct to be monitored, which may include the use of installed, visible, or covert cameras. Techs do not have any role in the investigations other than ensuring the correct operation of the surveillance cameras and system. No evidence was presented that techs know the identity of the persons being investigated. Special operations are performed at once or twice per month. In contrast to special operations, special observations are used for situations such as a dealer suspected of improper activity. Surveillance tech responsibility for special operations or special observations is limited to ensuring the integrity and operational status of the surveillance system.

The Petitioned-for Unit does not Include Confidential Employees

The party asserting confidential status has the burden of proof. *Crest Mark Packing Co.*, 283 NLRB 999, 999 (1987). Confidential employees are limited to those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations, or who regularly substitute for those who do. See, e.g., *Waste Management de Puerto Rico*, 339 NLRB 262, 262 n. 2 (2003); *Firestone Synthetic Latex Co.*, 201 NLRB 347, 348 (1973); *Ladish Co.*, 178 NLRB 90, 90 (1969). The Board adopted a labor-nexus test in *B. F. Goodrich Co.*, 115 NLRB 722, 724 (1956), holding that any broadening of "confidential" would needlessly preclude employees from bargaining collectively together, and that the Board would limit the term to "only those employees who assist and act in a confidential capacity to persons who formulate, determine, *and* effectuate management policies in the field of labor relations." Id. at 724.

The Board has found confidential employees in limited situations under this narrow definition. Secretaries to an employer's negotiating team and to management officials who were responsible for formulating contract proposals were confidential employees because they assisted in the preparation of and/or had access to confidential labor relations information such as data in preparation for contract negotiations, minutes of negotiation sessions, and grievance investigation reports. *Firestone Synthetic Latex Co.*, 201 NLRB 347, 348 (1973); *Bakersfield Californian*, 316 NLRB 1211, 1212-1213 (1995) (refusing to identify an employee as confidential notwithstanding her supervisor's roles in labor relations where the employee did not assist her in a confidential capacity, while finding confidential status for another employee who had access to labor strategy notes). Secretaries to the vice-president and the secretary-treasurer of an employer were confidential employees where they were responsible for preparing orders and documents in labor relations matters, and were present when labor relations matters were discussed by their supervisors, which included confidential meetings between officers and supervisors where the employer's policies on grievances and union negotiations were discussed. *Grocers Supply Co.*, 160 NLRB 485, 488-489 (1966). In contrast, secretaries to other managers are not confidential employees where the managers merely make administrative determinations regarding collective-bargaining agreements, and their participation in the bargaining process was limited. Even involvement in the handling of routine grievances was insufficient. *B. F. Goodrich Co.*, 115 NLRB 722, 725 (1956).

The Employer asserts that the installation and maintenance of the recording system, including the use of the recording system in investigations which could lead to discipline, and the techs' access to various other systems, demonstrates the confidential status of surveillance techs. Employees are not considered confidential employees simply because they have access to information, including personnel records, or where they can bring information to management which may ultimately lead to disciplinary action. See, e.g., *Ladish Co.*, 178 NLRB 90, 90 (1969) (citing *RCA Communications, Inc.*, 154 NLRB 34, 37 (1965)).

Similarly, the Employer contends that the surveillance techs are confidential employees because of their administrative access to surveillance systems, and their extensive access to the property through the use of master keys. Employees are not deemed confidential simply because they have access to confidential business information. *Fairfax Family Fund, Inc.*, 195 NLRB 306, 307 (1972). In comparison, an employee who has access to confidential information dealing with contract negotiations is a confidential employee, while a clerk who prepares statistical data for use by an employer during contract negotiations is not, because the clerk cannot determine from the prepared data what policy proposals may result. *Kieckhefer Container Co.*, 118 NLRB 950, 951-953 (1957). The Employer also contends that techs are confidential employees because their property access *could* allow them to obtain information on labor relations policies if they improperly accessed areas where such information is stored. The Board has rejected assertions that employees are confidential because they may overhear conversations related to labor relations by virtue of their job location which makes it possible to overhear management discussions of grievances. *Swift & Co.*, 119 NLRB 1556, 1567 (1958). As noted above, surveillance techs are prohibited, under threat of discipline, from improperly using their electronic or physical access to delete, modify, or access information, including any information related to labor relations policies, and no evidence was presented that any of the surveillance techs have engaged in misconduct regarding their electronic or physical access.

NLRB v. Hendricks County Rural Electric Membership Corp., 454 U.S. 170 (1981), cited by the Employer, does not support the Employer's position. Hendricks involves two related cases including Malleable Iron Range Co. (Malleable). The Court agreed with the Board's finding that Weatherman, a personal secretary to the general manager and chief executive officer, was not a confidential employee under the Board's labor-nexus test as she did not act in a confidential capacity with respect to labor-relations matters, and did not have confidential duties with respect to labor policies. Id. at 172, 190, 191. Similarly, as to Malleable, the Court rejected a claim that confidential employee should include all employees in possession of confidential business information. Id. at 191.

Here, in contrast, even assuming that the surveillance techs have access to confidential information through their access to the video system, they do not act in a confidential capacity with respect to labor-relations matters or labor policies. The Employer claims that the techs are directly and inextricably involved in the Company's efforts to investigate potential employee misconduct and adjust grievances related to such matters. No evidence was presented that techs performed any role during investigations other than the installation of, and maintenance of the video recording system. The techs were not involved in the determination of misconduct, the determination of punishment, the development of policies,

or the adjustment of any grievance related to any change of policies or resolution of discipline issued as a result of the investigation. Aside from the maintenance of video systems in support of investigations, no evidence was presented that surveillance techs acted in a confidential capacity with management. Specifically, no evidence was presented that surveillance techs act in a confidential capacity with supervisors or managers regarding labor-relations matters or policies.

The Employer has not met its burden of proof to show that the surveillance techs are confidential employees as the Employer has not shown that the techs act in a confidential capacity regarding labor-relations matters or labor policies to persons who exercise managerial functions in the field of labor relations. I am, therefore, refusing to classify the surveillance techs as confidential employees who should be excluded them from the petitioned-for unit on that basis.

The Petitioned-for Unit does not Include Guards

To be considered a guard under the Act, an individual must enforce rules to protect the property of the employer's premises against employees and other persons. *Reynolds Metal Co.*, 198 NLRB 120, 120 (1972). Employees with mixed duties are guards where a portion of their time, and a significant portion of their job, is spent performing guard duties including enforcement of company rules as a continued part of their responsibility. Id. Employees who install and maintain electrical alarm devices were not guards where they did not receive guard training, worked under different supervision than the full-time guards, and were dispatched only when an alarm was caused by a malfunctioning alarm device. *American District Telegraph Co.*, 128 NLRB 345, 346 (1960). Access to employer property, and admitting persons onto the property, is insufficient to find guard status where the employees had no authority to enforce rules to protect property or persons. *Meyer Mfg. Corp.*, 170 NLRB 509, 509-510 (1968).

The Employer has not supported its claim that the surveillance techs are guards. The evidence presented does not show that surveillance techs enforced rules to protect property against employees and other persons. No evidence was presented showing that surveillance techs enforce rules or protect property against anyone. Instead, the techs' responsibilities are limited to the installation, modification, removal, and maintenance of the video monitoring system. In the absence of evidence showing the surveillance techs enforce rules to protect property or persons, they cannot be classified as guards under the Act notwithstanding their broad access to the employer's property or their ability to grant access to others. *Meyer Mfg. Corp.*, 170 NLRB 509, 509-510 (1968). Further, the Employer here utilizes a separate Security Department with its own security officers who are responsible for enforcing rules to protect the property of the employer's premises against employees and other persons. Surveillance techs install and maintain the recording system, and respond to system problems. They are, therefore, not guards. Cf. *American District Telegraph Co.*, 128 NLRB 345 (1960).

The claim that the surveillance techs are guards is not aided by the cases cited by the Employer. *Wright Memorial Hospital*, 255 NLRB 1319 (1980), is distinguishable in comparison to the facts here. In that case, the Board reversed the Regional Director and found that ambulance employees were guards because they enforced, against employees and

others, rules to protect the employer's property and the safety of persons on the premises. Id. at 1320. In addition to their regular ambulance duties, they were required to make one-hour security rounds, usually twice a shift, and were required to watch for fire, theft, vandalism, and unauthorized personnel, although they reported violations to their department head, as opposed to taking action on their own. Id. The hospital had no other security force. Id. Here, surveillance techs make no rounds, and are required to watch for nothing other than issues affecting the surveillance system.

MGM Grand Hotel, 274 NLRB 139 (1985), essentially stands for the same proposition, i.e., that employees can be classified as guards notwithstanding the lack of physical confrontation, but does not otherwise assist the Employer's argument. In *MGM Grand*, the Board found that the operators were guards where the operators' primary duty was keeping the hotel safe for employees and guests. They monitored a safety system each shift, which included, among other things, door exit alarms, motion detectors, and a watch tour system. Moreover, they were part of the security department, were relieved by security officers for breaks and in the event of alarms, and were required to monitor and report possible security problems, infractions, and possible life-endangering situations. Id. at 139-140. The Board contrasted the case with other alarm cases, as the MGM operators notified security, but also dealt directly with employees in other departments such as engineering, and worked with security officers to determine the cause of, and to correct, the disturbance. Id. at 140 fn. 9.

As noted above, the security techs' responsibilities are completely different than those of the security officers, and contain none of the responsibilities for enforcing any of the Employer's rules beyond those of any other employee. Installing, altering, removing, and monitoring recording systems, even to assist others in their investigations, are insufficient reasons to conclude that the surveillance techs are guards. I am, therefore, refusing to classify the surveillance techs as guards who should be excluded from the petitioned-for unit on that basis.

The Employer moved to strike the Petitioner's closing comments regarding representation at other hotels. A ruling on the motion to strike is unnecessary as the Petitioner presented no evidence to consider in support of the comments, and the comments had no impact on my decision.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time surveillance techs at the Employer's facility, excluding all other employees, including office, clerical, professional, guards, and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, AFL-CIO.

A. Election Details

The election will be held on July 7, 2015 from 12:00 PM to 3:00 PM at the Training Room A at the Employer's facility.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending June 21, 2015, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses,

available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties[6] by **Thursday, July 02, 2015**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties name in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the

[6] At hearing, the Petitioner waived the requirement that it receive the voter list 10 days prior to the election.

nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Phoenix, Arizona, this 30th day of June 2015.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

BELLAGIO, LLC d/b/a BELLAGIO LAS VEGAS **Employer** **and** **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, AFL-CIO** **Petitioner**	**Case 28-RC-154081**

AFFIDAVIT OF SERVICE OF: DECISION AND DIRECTION OF ELECTION DATED June 30, 2015

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 30, 2015, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

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June 30, 2015
Date

Nancy Martinez, Designated Agent of NLRB
Name

/s/ Nancy Martinez
Signature